IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1007 of 2007
With
CIVIL APPLICATION No. 2775 of 2007
In
FIRST APPEAL No. 1007 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO.LTD. - Appellant(s)
Versus
MANUBHAI RAIJIBHAI VAGHELA & 2 - Defendant(s)

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Appearance :
MR MEHUL SHARAD SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal at the instance of the insurance company is directed against the judgement and award dated 1st December, 2006 of the Motor Accident Claims Tribunal(Aux.) at Kheda in MACP No.98/2006 awarding compensation of Rs.2,54,300/- under Section 163A of the Motor Vehicle Act, 1988 on account of the death of claimant's wife.

2. On 24th March, 2006, deceased Savitaben aged 28 years was travelling as a passenger in the auto-rickshaw insured by the appellant insurance company. The auto-rickshaw turned turtle, the deceased was thrown out of it and sustained serious injuries which proved fatal. The husband of the deceased filed the claim petition under Section 163A of the Act. The Tribunal assessed the income of the deceased at Rs. 1800/- per month and on that basis, dependency benefit to the claimant was assessed at Rs.1200/- per month. Considering the age of the deceased, the Tribunal computed the compensation for loss of dependency at Rs.2,44,800(Rs.1200x12x17). Adding conventional amounts as per the Second Schedule, the Tribunal made the award for total compensation of Rs.2,54,300/- with interest at the rate of 7.5% per annum from the date of

claim petition(4/4/2006) till the date of deposit.

3. The insurance company of the auto-rickshaw is in appeal before us only on the ground that the Tribunal erred in not accepting the insurance company's defence that the auto-rickshaw driver was not having a valid driving license and the driving badge and, therefore, there was breach of the terms and conditions of the insurance policy. It is therefore, submitted by Mr. Mehul Sharad Shah for the appellant insurance company that the appellant not to have been held liable to satisfy the award.

In support of the said contention, reliance is placed on the affidavit of Ms. Maltiben R. Shinoy, officer of the appellant insurance company. In the said affidavit, reference is made to the report of the Investigator who had recorded the statement of the auto-rickshaw driver on 11th February, 2006. On the basis of the said report of the Investigator, the officer of the appellant insurance company stated in the affidavit dated 7th November, 2006 as under :

" As regards the driving license of Ramesh Jivabhai (auto-rickshaw driver), he had license no.018827/05 valid for the period from 27-7-2005 to 26-7-2025. The accident in question took place when he was driving the passenger auto-rickshaw. Since the auto-rickshaw driver had not obtained the requisite badge for driving the

auto-rickshaw, he did not have the valid driving license for driving a passenger auto-rickshaw as prescribed by the Motor Vehicles Act and the rules thereunder. Hence, as per the terms of the policy, the insurance company would not be liable if the vehicle was being driven by a person not possessing a valid driving license."

4. A Photostat copy of the driving license made available by the Investigator to the insurance company is shown for our perusal. From the said Photostat copy, it is not possible to figure out the vehicle which Rameshbhai Jivabhai is licensed to driver. However, the affidavit of the insurance company does not at all indicate that Rameshbhai Jivabhai did not have a license to drive an auto-rickshaw. Since the insurance company already had the particulars of the license number, the insurance company could have easily obtained and produced the necessary evidence from the concerned Regional Transport Office.

The insurance company, however, preferred to rest content with drawing adverse inference against the auto-rickshaw driver only on the ground that he did not have the requisite badge being issued by the authorities under the Motor Vehicles Act to auto-rickshaw drivers. In our view such a contention could never be accepted. The provisions of the Motor Vehicles Act or the rules thereunder may prescribe several

formalities for drivers of vehicles, but the statutory defences available to the insurance company for contesting its liability are only those specifically indicated in Sub-section(2) of Section 149 of the Act, the relevant provisions of which read as under :

"Sec.149(2)
.....an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party(to the proceedings) and to defend the action on any of the followings grounds, namely"-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of vehicle....
(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
(iii) a condition excluding liability for injury caused or contributed to by conditions of war....

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

5. There is no dispute whatsoever about the fact that the appellant insurance company did not invoke any defences available under Sub-clauses(i) and (iii) of Clause(a) or under clause (b). The only defence which was invoked by the insurance company was under Sub-

clause(ii) of Clause(b) regarding the vehicle having been driven by a person who was not duly licensed. However, the relevant extract from the affidavit of insurance company's officer clearly indicates that the auto-rickshaw driver did have a driving license on the date of accident which took place on 24th March, 2006. It was not the case of the insurance company in the said affidavit that the license holder was licensed to drive a vehicle other than an auto-rickshaw. It merely appears to be an inference of the concerned officer on the basis of the report of the Investigator that the auto-rickshaw driver did not have a badge required to be obtained under the provisions of Motor Vehicles Act and rules thereunder.

6. In view of the aforesaid statutory provisions permitting the insurance company to raise only those defences which are specifically enumerated under Sub-section(2) of Section 149 of the Act, the contention of the insurance company cannot be accepted. The provisions of the Motor Vehicles Act and rules thereunder may stipulate various requirements for drivers of vehicles. The breach or noncompliance with any such statutory provisions cannot be invoked by the insurance company unless such breach is specifically covered by the provisions of Sub-section(2) of Section 149 of the Act.

7. We may not be treated to have expressed any opinion that breach of any such statutory provisions covered by Sub-section(2) of Section 149 of the said Act would per se absolve the insurance company to avoid its liability to satisfy the award. Even in such cases, it may be open to claimants to submit that the insurance company would still be liable. In the facts and circumstances of the case, however, we need not dilate on that aspect because in the facts of the present case, the insurance company has not been able to prove its case that the driver of the auto-rickshaw was not duly licensed to drive an auto-rickshaw.

8. In the result, we do not find any merit in the appeal and same is therefore, summarily dismissed.

The Civil Application for stay is also dismissed.

The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Claims Tribunal within a period of one month from today.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)